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Supreme Court, U.S.
FILED
JAN 4 1993
OFFICE OF THE CLERK

No. 92-795

In The

Supreme Court of the United States

October Term, 1992

LARRY POUNDS,

Petitioner,

vs.

DAVID GRIEPENSTROH, HUGH BARCLAY, and SPENCER COUNTY, INDIANA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION

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January 4, 1993

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QUESTIONS PRESENTED

1. Is the United States Court of Appeals for the Seventh Circuit in conflict with the decision of the Supreme Court in *Anderson vs. Creighton*, 483 U.S. 635 (1987), and in conflict with other federal courts of appeals, by holding that a constitutional right is not "clearly established" unless a nearly identical case has been decided, and by granting qualified immunity in practically every case of first impression to officials who violate constitutional rights?

2. Is the United States Court of Appeals for the Seventh Circuit, by focusing its inquiry in patronage dismissal cases on the potential of the public office in question to be politicized, even wrongfully, rather than on the legitimate public purpose of the office itself, in conflict with the decision of the Supreme Court in *Branti vs. Finkel*, 445 U.S. 507 (1980)?

3. Does the decision of the United States Court of Appeals for the Seventh Circuit, reversing the trial court, and granting qualified immunity to the defendants Commissioners of Spencer County, Indiana for the political discharge of County Veteran Service Officer, conflict with the decisions of the Supreme Court in *Anderson vs. Creighton*, 483 U.S. 635 (1987) and in *Branti vs. Finkel*, 445 U.S. 507 (1980)?

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STATEMENT OF THE CASE

On September 16, 1990, due to the resignation of Dallas Jones, the Board of Commissioners met to fill the vacancy for the Veteran's Service Officer. Plaintiff, Larry Pounds, was recommended to the Spencer County Board of Commissioners by the Rockport American Legion and Chrisney V.F.W. to fill the vacancy. However, a motion was made by one of the county commissioners to appoint Alfred Branch and he was chosen over the plaintiff to fill the unexpired term. (Resp. App. 1).

Several weeks later on October 6, 1980, a group of veterans appeared at the commissioners meeting, including Larry Pounds, among others, and they requested that a motion be made by the Board of Commissioners to specify that whenever an opening occurs for the position of Veteran's Service Officer, that time be given to fill the vacancy, and that each veteran organization, including the V.F.W. posts be notified so that they could present recommendations to the Board to fill the vacancy. This was put in the form of a motion and it was adopted by the Spencer County Commissioners. (Resp. App. 3).

On December 31, 1980, two months later, the commissioners noted that they had received two applications for the position of Veteran's Service Officer, from Larry Pounds and Bill Trafton. Both individuals had been recommended by different V.F.W. and American Legion posts. Pounds was nominated at the December 31, 1980 commissioners' meeting, styled as the organizational meeting for 1981, and he was appointed as the Veteran's Service Officer for the up-coming year of 1981, by action of the Spencer County Commissioners. (Resp. App. 7, 8).

Pounds was appointed to the office for 1982 at the December, 1981 commissioners' meeting. (Resp. App. 9).

On September 7, 1982, Pounds resigned, effective September 1, 1982, as the Veteran's Service Officer for Spencer County, and in the commissioners' minutes of that date, it was noted that Commissioner Harlan reminded those present that the Board had previously acted to notify all legion organizations when a vacancy would occur before the Board of Commissioners would fill the position. At this meeting, a letter was presented from Rockport American Legion, Post #254 recommending that Roland Bretz fill the unexpired term of Larry Pounds, and this was approved by the Board of Commissioners. It was specifically noted that the unexpired term of Larry Pounds, "which expires December 31, 1982," would be filled by Bretz. (Resp. App. 12).

On December 27, 1982, the commissioners reappointed Roland Bretz as the Veteran's Service Officer for the year 1983. (Resp. App. 17). This one year appointment was again done in advance of the calendar year 1983.

However, five weeks later, Bretz resigned as Veteran's Service Officer and the Spencer County Commissioners voted on February 7, 1983, to accept his resignation effective March 1, 1983. (Resp. App. 19).

At the Spencer County Commissioners' meeting of March 7, 1983, five individuals were recommended by Rockport American Legion Post #254 to fill the vacancy of the Veteran's Service Officer created by the resignation of Roland Bretz. The five recommended were: Larry Pounds, John Garrett, Bob Richard, Paul Lehr and William Rininger. Larry Pounds inquired if the appointment would be made that day. (Resp. App. 24). The president of the Board of Commissioners, Joe Harlan, reported to

two of the aspirants, Bob Richard and Larry Pounds, that since there were only two commissioners present and they were in disagreement over whom to appoint, that the decision would have to be tabled until March 21, 1983. (Resp. App. 25).

On March 21, 1983, the commissioners received a letter from Mr. Richard in which he withdrew his application to fill this vacancy, thereby leaving four individuals in the running for the position. Pounds was subsequently appointed to fill the unexpired term of Roland Bretz, effective March 21, 1983. It was also noted that the commissioners required two "stipulations" to this appointment. The first was that the Veteran's Service Officer would maintain the hours of 8:00 a.m. to 4:00 p.m., and the second was that he would present a monthly report to the Board of Commissioners. There was also discussion that when the Veteran's Service Officer was away from the office, that he would have someone substitute in his place. It was agreed that the County Veteran's Service Officer would give the County Auditor's phone number to the public whenever he was gone. (Resp. App. 28).

On January 3, 1984, the Spencer County Commissioners considered the applications of John Garrett and Larry Pounds for Veteran's Service Officer of that calendar year. Both applicants had been endorsed by various legion members. It was decided to contact the various legion posts to make one or more recommendations to the commissioners prior to February 6, on this appointment. It was noted that Larry Pounds would continue as Veteran's Service Officer until February 6, 1984, when a further decision would be made between Garrett and Pounds. (Resp. App. 32).

On February 6, 1984, John Garrett withdrew his application for Veteran's Service Officer and Pounds was then reappointed for the remainder of 1984. (Resp. App. 36).

On January 7, 1985, Pounds was appointed as Veteran's Service Officer for calendar year 1985. (Resp. App. 37).

On December 16, 1985, Pounds was appointed as Veteran's Service Officer for one year, for the calendar year of 1986. (Resp. App. 40).

On January 2, 1987, Pounds was appointed as Veteran's Service Officer for one year by the Spencer County Board of Commissioners. (Resp. App. 43).

On December 21, 1987, Pounds was appointed for calendar year 1988 to a one-year term as Veteran's Service Officer. (Resp. App. 46).

On December 27, 1988, Spencer County Auditor Dorothy Beckman presented to the president of the Spencer County Board of Commissioners, James Wetzel, a letter from Veteran's Service Officer Larry Pounds. (Resp. App. 50). The letter thanked the Board of Commissioners for appointing Pounds as Veteran's Service Officer "this year," and he stated that, "I look forward to serving you in 1989." (Resp. App. 52). The commissioners at the December 27, 1988 meeting were James Wetzel, William Scherer and Hugh Barclay (a respondent herein). No action was taken at that meeting to re-appoint Pounds to this post for calendar year 1989.

On January 3, 1989, two newly elected commissioners, Louis Lubbenhusen and David Griepenstroh joined

Hugh Barclay on the county commission. At this meeting, a motion was made to appoint Don Patmore as Veteran's Service Officer, and the motion carried. (Resp. App. 56).

Contrary to the Petitioner's claim that he was told by one of the Commissioners that the decision to replace him was "110% politics," this question was allegedly put to the Board as formulated by Larry Pounds. Petitioner has alleged that he received an affirmative response.

The resulting litigation ensued.

ARGUMENT

I. THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT IS NOT IN CONFLICT WITH *ANDERSON VS. CREIGHTON* AND THE GRANTING OF QUALIFIED IMMUNITY IN THIS CASE WAS PROPERLY DECIDED BY A REVIEW OF CLOSELY ANALOGOUS CASES THAT SHOWED THE APPELLANT HAD NO CLEARLY ESTABLISHED RIGHT TO THE RETENTION OF HIS ANNUALLY APPOINTED OFFICE.

Anderson vs. Creighton, 483 U.S. 635, 107 S.Ct. 3034 (1987), held that a clearly established standard should not be applied on a level of generality that would bear no relation to the objective reasonableness test set forth in *Harlow vs. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727 (1982) and required that the contours of the right must be sufficiently clear so that a reasonable official would understand that he was violating that right.

Anderson vs. Creighton held that if an F.B.I. agent believed reasonably, although mistakenly, that probable cause and exigent circumstances were present, then the agent could not be held personally liable. *Anderson* was not an employment retention case in any way similar to the case at bar.

The broad parameters which this Court has issued in these types of employment cases come from the trilogy of *Elrod vs. Burns*, 427 U.S. 347, 96 S.Ct. 2673 (1976); *Branti vs. Finkel*, 445 U.S. 507, 100 S.Ct. 1287 (1980) and *Rutan vs. Republican Party of Illinois*, 497 U.S. 62, 110 S.Ct. 2729 (1990).

However, the only reported cases in 1989 involving the termination of a veteran service officer that were clearly analogous are *Savage vs. Gorski*, 850 F.2d 65 (2d. Cir., 1988), *Wagner vs. Hawkins*, 634 F.Supp. 751 (W. D. Ark., 1986).

Both the Second Circuit and the district court in Arkansas both held that local county veteran service officers could be fired for political reasons.

It is submitted that the appellant, Larry Pounds, did not carry his burden either at the district court level or at the appellate level to show that there were any clearly analogous cases that held to the contrary to put the Commissioners on notice that failure to re-appoint Pounds was a violation of the law.

II. THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS DID NOT REACH NOR ANSWER THE QUESTION THAT A VETERANS SERVICE OFFICER IN INDIANA COULD BE FIRED SOLELY FOR POLITICAL REASONS AND THUS DID NOT FOCUS ITS INQUIRY BEYOND, NOR CONFLICT WITH, THE DECISION IN *BRANTI VS. FINKEL.*

The only decision reached by the Seventh Circuit Court of Appeals was to grant qualified immunity to the Board of Commissioners of Spencer County, who were also sued individually, in their personal capacities.

Whether a Veteran Service officer in Indiana holds a politically sensitive position, subject, theoretically, to a politically motivated discharge, because such a position is one which dictates political loyalty, was answered in the negative by the district court, but the Seventh Circuit did not focus its decision into this inquiry.

In *Siegert vs. Gilley*, ___ U.S. ___, 111 S.Ct. 1789 (1991), the rationale for granting qualified immunity was reiterated by requiring any right allegedly violated to have been clearly established at the time of the officials' action. This Court noted that at the time a defendant acts, a determination of whether the plaintiff has asserted a violation of a constitutional right at all must also be inquired into.

It is submitted that Pounds has failed to actually allege any violation of any federal constitutional right. Although in *Elrod*, this Court held that patronage dismissals are in large part circumscribed by the First Amendment, this Court later held that both patronage

hiring or firing may be practiced if political affiliation is an appropriate requirement for the effective performance of a public office involved. *Branti*, 445 U.S. at 518, 100 S.Ct. at 1295.

The theoretical basis for this exception to the rule against patronage is the role that political affiliation and party loyalty are said to play in securing a representative government.

> Thus, "if any employee's private, political beliefs would interfere with the discharge of his public duties, his First Amendment rights may be required to yield to the state's vital interest in maintaining governmental effectiveness and efficiency. *Branti*, 445 U.S. at 517, 100 S.Ct. at 1294 (citing *Elrod*, 427 U.S. at 366, 96 S.Ct. at 2686).

While Justice Brennan's prior plurality opinion in *Elrod* had, in fact, rejected "governmental effectiveness and efficiency", as a rationale for patronage dismissals, *see Elrod*, 427 U.S. at 366, 96 S.Ct. at 2686, this Court found legitimate justification that could save some aspects of patronage from constitutional infirmity, stating:

> "The need for political loyalty of employees, not to the end that effectiveness and efficiency be insured, but to the end that representative government not be undercut by tactics obstructing the implementation of policies of the new administration, policies presumably sanctioned by the electorate. *Id.* 427 U.S. at 367, 96 S.Ct. at 2687.

Following the requirements of this court in *Siegert*, the line of inquiry in this case may be formulated as the following:

> Did Mr. Pounds official position give him broad responsibilities and place him in a position in which he could seriously threaten the goals of the appointive party, the Board of Commissioners?

The opportunity Mr. Pounds had in his position to affect and, if so inclined, to obstruct, the final dispensing of services makes the position of a Veteran Service officer a politically sensitive one for which party affiliation is a permissible criteria for the appointive authority to consider. This is in line with the Court's criteria in *Elrod*. The Court did not deviate from this admonition in *Branti*.

The appellant inappropriately characterizes the employee to be a mid-level public officer. Pounds' position was as the chief veteran service officer of Spencer County, Indiana. This office is subject to appointment by the Board of Commissioners of that county. Under I.C. 10-5-1-11, the county officer serves under the "supervision" of the Director of Veteran's Affairs, a political appointee of the Governor of the State. This is not a mid-level position, but rather the highest veteran official in the county. Pounds himself acknowledged that, on his own initiative, he implemented plans and policies which entailed changing office hours, transporting veterans to hospitals for payment (contrary to state policy), conducting of nursing home visits, submitting a budget, transferring funds between accounts, exercising control over space in the courthouse and setting annual goals for the

office. The Seventh Circuit Court of Appeals found that in such circumstances, the executive could logically believe that it was important that the veteran service officer share the same political outlook as the Board which appointed him to this county courthouse row office.

In December, 1988 Pounds asked the Spencer County Board of Commissioners, the majority of whom shared Pounds' same political party affiliation, to re-appoint him for calendar year 1989, as had been their previous custom. They rejected his request, giving the in-coming, newly elected board members their own opportunity to appoint someone whom Spencer County veteran's groups endorsed.

There is no argument that perhaps Larry Pounds and the Board of Commissioners of Spencer County shared the same goal to assist veterans to gain access to entitlement. But how these goals are to be achieved may be disputable. When a chief official in a county courthouse has broadly defined responsibilities, this is indicative of a policy-making position. Thus, the implementation of his plans can thwart the appointive body's policies and goals. Elections often turn on the success or failure of the incumbent to provide services. It is a fact of political life that governmental resources are not limitless. An individual who has authority over the ultimate allocation of governmental services can have, and does have, an important and daily impact on the voters. The types of policies and plans and degree of responsiveness taken by a Veteran Service Officer reflects on the appointive body and thus, Pounds held an important appointed political office. *Elrod* established that an office holder with policy-

making power does not have a constitutional right to be in a position to thwart the goals of the in-party. *Elrod*, 427 U.S. at 367, 96 S.Ct. at 2687.

III. A VETERAN SERVICE OFFICER WAS NOT A MID-LEVEL PUBLIC OFFICIAL VICTIMIZED BY WRONGFUL TERMINATION BECAUSE OF POLITICAL PATRONAGE AND THE SEVENTH CIRCUIT DECISION IS NOT IN CONFLICT WITH ESTABLISHED PRECEDENTS.

The incoming and newly elected Spencer County Board of Commissioners, in compliance with a mandate of voters properly followed the trilogy of *Elrod*, *Branti*, and *Rutan*, when they appointed another applicant to the position as the Spencer County Veteran's Service Officer after Larry Pounds' term of appointment had ceased. The Seventh Circuit followed the most reasonable approach in the area of qualified immunity, i.e., to review closely analogous cases involving a Veteran's Service Officer's termination. Had there been no reported analogous cases in existence, perhaps an intractable problem would have been faced by the courts. However, Pounds acted autonomously as a policy maker in a position able to thwart the officials who appointed him on an annual basis.

CONCLUSION

The decision below is well substantiated by the facts and the application of the law. This petition should be rejected. The Seventh Circuit Court of Appeals should be upheld.

Respectfully submitted,

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January 4, 1993

RESPONDENT'S APPENDIX

Defendant's Exhibit 28

COMMISSIONERS SPECIAL MEETING

September 16, 1980

The Board of Spencer Co. Commissioners met to fill the vacancy of Veteran Service Officer due to the resignation on September 15, 1980 of Dallas Jones.

The meeting was called to order by President Schue with all members present. The resignation of Dallas Jones as Veteran Service Officer effective September 15, 1980 was read by President Schue. Also present was Jerry Hargis from the Journal-Democrat.

The floor was opened for recommendations to fill the vacancy. The resume of Larry Pounds was presented to the Board by Commissioner Harlen. A group of Veterans representing Rockport American Legion and Chrisney VFW with Allen Titus as spokesman recommended Larry Pounds to fill the vacancy. Mr. Titus stated that in the past the Commissioners had worked with the Legion in appointing a person that would fulfill the needs of the Veterans of the County. Mr. Titus further stated that a disabled veteran if qualified, should hold the position.

A motion was made by Adrian Pund to appoint Alfred Branch. Second by Jerry Schue. Commissioner Harlen abstained from voting.

Members present representing Veteran Organizations were: Marvin Hamilton, James Beckort, Paul Bingle, Tom Fleischman, Larry Pounds, Charley Roberts, Allen Titus and Bob Walker.

Meeting adjourned at 7:00 P.M.

BOARD OF COMMISSIONERS

/s/ Jim Schue

/s/ Joe Harlen

/s/ Adrian Pund

Attest: /s/ Mary E. Haaff
Mary E. Haaff, Auditor

Defendant's Exhibit 29

COMMISSIONERS MEETING

October 6, 1980

The meeting was called to order at 8:15 A.M. with all members present. Also present was County Attorney, Lueken. Minutes of September 2, 5, 16 and 29th were approved as read.

VETERAN SERVICE OFFICER

A group of veterans were present and requested a motion be made by the Board and made part of minutes that when an opening occurs for the position of Veteran Service Officer that time be given to fill the vacancy and that each veteran organization, including VFW posts be notified so that they may present recommendations to the Board to fill the vacancy. Joe Harlen made the motion with a second by Adrian Pund. All in favor. Veterans present were: Larry Pounds, Jim Yellig, Rich Wilkerson, Lloyd Vincent Jr, Paul Bingle, Bill Parm and Marvin Hamilton.

SPECIFICATIONS – (Co. Books, Stationery and Printing)

Specifications for supplying the County with books, stationery and printing for 1981 was approved by the Board. The Auditor was instructed to advertise for bids for opening on December 1.

JAIL INMATE – (Susie M. Cram)

Attorney Leuken presented a letter from Attorney Ronald M. Sullivan representing Owensboro-Daviess County Hospital regarding payment of Ms. Cram's hospital stay while she was an inmate of the County Jail. Attorney Leuken advised the Board that he responded to the letter of Attorney Sullivan requesting an itemized claim which has to be submitted before payment could be considered by the Board. Leuken also presented a letter from Attorney Sullivan stating he had forwarded Attorney Leuken's letter to the hospital and requested them to forward the requested information to the Board. The Sheriff was directed to make the necessary transfer of funds within the Jail Budget for the Boards consideration of payment.

WILLOW POND ROAD – (Bridge on Co. Road 300N)

The Auditor was instructed by the Board to void check #9890 payable to Chapman and McCoy Drainage Co. in the amount of $2,492.50 until restitution was [sic] to the County for damage done by a dragline operated by Mr. McCoy to this bridge.

COMMUNITY DEVELOPMENT BLOCK GRANT – (St. Meinrad Community Center)

Certificate of Completion was signed by Board President Schue on the above project.

HUD – (Projects 1981)

Gary Walton of Indiana 15 Regional was present and explained the various programs available for Spencer County for 1981. The Auditor was instructed to advertise the 2 public hearing notices to allow citizens of the County an opportunity to express their preferences on program activities: The first hearing will be held on October 20, 1980 at 7:00 P.M. at the Spencer County 4-H Association Inc., Junction 70 & 231, Chrisney, Indiana and the second hearing to be held same time and place on October 27, 1980.

STAMP MACHINES – (Pitney Bowes)

The office holders were called in for a demonstration of the automatic stamp machine presented by Bernhard Falk of Pitney Bowes. No action was taken by the Board at this time.

Defendant's Exhibit 30

COMMISSIONERS MEETING

(Organizational Meeting For 1981)

December 31, 1980

After the swearing in of Commissioners Alberta Knepper and James Wetzel they met in the Commissioners Room at 3:35 P.M. with Commissioner Joe Harlen for their organizational meeting with appointments to become effective January 1, 1981.

The first order of business was the appointment of *President* and *Vice President* of the *Board of Commissioners,* James Wetzel made the motion *Joe Harlen* be appointed *President* of the Board. Second by Alberta Knepper.

Alberta Knepper made the motion *James Wetzel* be appointed *Vice-President* of the Board. Second by Joe Harlen.

Alberta Knepper made the motion *Bruce Cissna* be appointed *County Attorney* with a second by James Wetzel. All in favor.

On a motion by James Wetzel and a second by Alberta Knepper, *John Hargis* was appointed *Drainage Board Attorney.* All in favor.

Leroy Meece was unanimously appointed as *County Home Superintendent* with a motion by James Wetzel and a second by Alberta Knepper.

Diane Meece was appointed *County Home Matron* on a motion by Joe Harlen and a second by James Wetzel. All in favor.

James Wetzel made the motion and a second by Alberta Knepper that *Elmer Gentry* be appointed *Sanitation Lead Man.* All in favor.

Joe Harlen made the motion and a second by Alberta Knepper that *Donald R. Clark* and *John Limp* be appointed the *two* remaining *Sanitation* positions. All in favor.

Herb Clark was appointed *Head Mechanic* on a motion by James Wetzel and a second by Alberta Knepper. All in favor.

Joe Harlen made the motion *William Garrett* be appointed *1st District Foreman.* Second by Alberta Knepper. James Wetzel abstained.

Floyd Weatherholt was appointed *2nd District Foreman* on a motion by James Wetzel and a second by Alberta Knepper. All in favor.

Alberta Knepper made the motion *Earl Leistner* be appointed *3rd District Foreman.* Second by James Wetzel. All in favor.

President Harlen called for a motion on an appointment of a County Road Superintendent. He called a second and third time, there being no response to the request, said proposal is dead.

Commissioner Harlen stated that two applications had been received for the position of Veteran Service Officer, Larry Pounds and Bill Trafton. He further stated that Larry Pounds had been recommended by the membership of the American Legion, Rockport Post and the application of Bill Trafton had been presented by Bob Davis of the Dale Post. James Wetzel stated he had contacted the Dale Post and was informed that Bill Traftons

[sic] application was never brought before their membership for consideration. James Wetzel made the motion *Larry Pounds* be appointed *Veteran Service Officer.* Second by Joe Harlen. Alberta Knepper abstained.

Defendant's Exhibit 31

APPOINTMENTS (con't)

Commissioner Wetzel made the motion the following appointments be made to the *Board of Zoning Appeals*:

1 year term – Robert Mack
2 year term – Bill Temple
3 year term – Raymond Lynam
4 year term – Sandra Siddons
4 year term – Dave Hammer

Second by Knepper. All in favor.

Commissioner Wetzel made the motion to appoint the following positions for 1982.

President Board of Commissioners – Harlen
Vice President Board of Commissioners – Wetzel
President Drainage Board – Harlen
Vice President Drainage Board – Wetzel
County Attorney – Bruce Cissna
Drainage Board Attorney – John Hargis
Civil Defense Director – Tom Miller
Veteran Service Officer – Larry Pounds

Second by Knepper. All in favor

Wetzel made the motion *Elmer Gentry* be appointed *Sanitation Lead Man*. Second by Harlen. All in favor.

Knepper made the motion *Charlie Hall* be appointed *Head Mechanic*. Second by Harlen. All in favor.

On a motion by Wetzel and a second by Harlen *Bill Garrett* was appointed *District 1 Foreman*. All in favor

Floyd Weatherholt was appointed *District 2 Foreman* on a motion by Harlen and a second by Knepper. All in favor.

On a motion by Knepper and a second by Wetzel *Earl Leistner* was appointed *District 3 Foreman*. All in favor.

Commissioner Wetzel made the motion *Darrell Stephens* be appointed *Superintendent*. Second by Harlen citing Stephens experience as one of the reasons for appointing him. Commissioner Knepper abstained.

Commissioner Wetzel made the motion *Carol Champion* be appointed *Road Clerk*. Second by Knepper. Harlen voted in favor adding Carol had done an excellant [sic] job.

The Board set their second meeting of the month the third Monday.

EMERGENCY AMBULANCE (Civil Defense Bldg.)

Two bids were submitted for installing shower facilities at the Civil Defense Building for the use of the emergency ambulance service.

1. Dale Heating & Plumbing – $445.80
2. General Contracting & Home Building – $600.

Commissioner Knepper made the motion the low bid of Dale Heating & Plumbing for installing a 35" fiberglass shower stall and hot water be accepted. Second by Wetzel. All in favor.

COUNTY HOME – Ordinance 81-4 (Closing)

Attorney Cissna read aloud the Ordinance whereby the Commission [illegible] the County Home December 31, 1981.

Commissioner Knepper made the motion to adopt the Ordinance dis[illegible] Home December 31, 1981. Second by Wetzel. All in favor.

SALE OF COUNTY OWNED PROPERTY

The Commissioners approved the order to sell a surplus [illegible] Freezer, Serial #RT18165, Model #1V18TCW56 from [illegible].

Defendant's Exhibit 32

COMMISSIONERS MINUTES

September 7, 1982

The meeting was called to order at 9:00 A.M. with President Harlen and Commissioner Wetzel present.

Wetzel made the motion the minutes of August 16 be approved as read. Second by Harlen.

VETERAN SERVICE OFFICER

President Harlen read aloud the resignation of Larry Pounds as Veteran Service Officer effective September 1, and reminded those present he promised if the vacancy ever occured [sic] all legion organizations would be contacted before the post was filled. Haaff informed the Board Pounds turned in the office key August 27. Marvin Hamilton presented a letter endorsed by Paul Lehr, Commander of Post #254 whereby their membership recommended Roland Bretz fill the vacancy. He stated Larry Pounds had forwarded a letter to all Veteran organizations to present their recommendation to the Board. With no other recommendations presented Wetzel made the motion Roland Bretz fill the unexpired term of Larry Pounds which expires December 31, 1982. Second by Harlen.

President Harlen made the motion Larry Pounds be reimbursed up to four days if he were available to help Mr. Bretz get organized. Second by Wetzel.

CIVIL DEFENSE DIRECTOR

Curtis King from the New Boston Fire Department recommended Harold Purviance as Civil Defense Director. President Harlen stated he had contacted Purviance and he was not interested in the job and there were three other people who have shown an interest. The Board agreed since an emergency might arise they would not accept the resignation of Tom Miller until a replacement had been found.

SPENCER COAL COMPANY, INC. (1600N. .5 mi.)

The Auditor was requested to forward a certified letter to the bonding company stating Spencer Coal Comapny [sic], Inc. has not fulfilled their responsibilities and obligations on repairs of County Road 1600 N., .5 mi. and steps will be taken to forfeit the bond if immediate action is not taken to eliminate the problem. A copy is to be forwarded to Spencer Coal.

President Harlen stated he would like a verification of the intentions of Spencer Coal to pay the county delinquent taxes owed as in two years they are not filing bankruptcy again.

Commissioner Knepper stated the owners are out of state and so are the employees. The company is taking the resources out but is not willing to pay their taxes and if the company wanted co-operation from the Commissioners they would have to pay taxes and keep roads fixed.

She stated since the company filed a chapter 11 she doubted the county had any authority to collect the back taxes.

Jeff Garrison representing Spencer Coal stated County Road 1600N was being repaired. He was not sure why the delinquent taxes were never paid. The company is under new management and Chapter 11 was suppose to elliviate [sic] any past debts with the county.

He informed the Board the company plans to make up the back taxes and make good all debts.

Harlen informed Garrison the company needs to repair 1600N so Wetzel can inspect it.

The application of Spencer Coal on *1000 N commencing at intersection of 245 and 1000N, thence W. on 1000N, a distance of 1¾ mi. in Hammond Twp.* was presented to the Board.

Commissioner Knepper stated she would not approve any more road bonding until a list of equipment and serial numbers were presented to the proper officials.

President Harlen informed Garrison 1600N needed repaired and a written plan on payment of the delinquent taxes needs to be presented to the Board.

Garrison stated the company is working on a repayment plan with the bankruptcy Judge.

Treasurer Neuhoff stated all the company would have to do is file a petition with the Bankruptcy Judge asking that the company pay the debt which is the procedure they used recently to purchase a piece of equipment.

Attorney Cissna informed the Board they had to treat Spencer Coal as a new company since they filed bankruptcy and no restrictions could be placed upon them because they are in Chapter 11. If the Board did they would have to treat other companies the same.

COURTHOUSE BOILER

Attorney Cissna with Engineer Phillip Grounds began opening bids of the [illegible] Courthouse.

Defendant's Exhibit 1

Commissioners December 27, 1982 (con't)

COURTHOUSE ROOF

The Auditor was requested to forward letters to area roofers of the Board's intention to renovate the courthouse roof in 1983 and if interested, to contact President Harlen for more information.

BONDS

The Board approved the official bonds of *John A. Hargis* and *Eric K. Ayer,* Prosecutors Office. The new bonds are for the minimum of $8,500, as set out in the statute.

The Board approved the Bond of Edward Beren, Grass Township Trustee.

The Board approved the contract bond of Stallings and Young Excavating on Bridge #165.

AMERICAN DISPOSAL (County Landfill)

Haaff was requested to inform Attorney Cissna to forward a letter to Charles Brown, President of American Disposal & Mining Co., Inc. to attend the Board's January 3 meeting to discuss his company's 1983 contract with Spencer County which commences January 1, 1983.

The Auditor was requested to pay Warrick County monthly in the amount of $5,534.33 until further notice.

Haaff in formed [sic] the Board their appropriation was based on being able to use American's landfill at

$5,000, per month in 1983 and each month Warrick County is paid, it is $534.33 over the monthly appropriation.

APPOINTMENTS

Commissioners Wetzel made the motion *Sandra Siddons* be re-appointed to a one year term on the *Advisory Planning Commission*. Second by Knepper. All in favor.

Knepper made the motion *Kenneth Jones* replace Robert Mack on the *Zoning Appeals Board*. Second by Wetzel. All in favor.

Commissioner Wetzel made the motion to re-appoint the following positions for 1983:

Drainage Board Attorney – John Hargis
County Attorney – Bruce Cissna
Veteran Service Officer – Roland Brets [sic]
Sanitation Lead Man – Elmer Gentry
Superintendent – Darrell Stephens
Road Clerk – Carol Champion
Park and REcreation [sic]
Board Member – 2 year term beginning first Monday in January, 1983 – C.T. Grubb

Second by Knepper. All in favor.

Harlen made the motion *Paul D. Frank* replace Capt. Tom Miller as *Civil Defense Director*. Second by Knepper. All in favor.

Wetzel made the motion *James Kellams* be appointed *head mechanic*. Second by Knepper. Harlen abstained.

Commissioner Knepper made the motion *Neal Esarey* be appointed *Foreman of District 3.* Second by Wetzel. All in favor.

Wetzel made the motion to appoint *Joe Harlen, President of Board of Commissioners* and *President of Drainage Board.* Second by Knepper. Harlen abstained.

Knepper made the motion *Commissioner Wetzel* by appointed *Vice President, Board of Commissioners* and *Vice-President, Drainage Board.* Second by Harlen.

BRIDGE RE-INSPECTION

Haaff reported Steve Dilkes phoned to say the County should receive notice early in January from the Indiana Department of Highways to proceed with the bridge re-inspection.

PROCLAMATION (Agriculture Census)

Commissioner Wetzel made the motion to adopt the proclamation urging farm and ranch operators to fill out and return their farm questionaire [sic] to the Census Bureau. Second by Harlen. Knepper abstained.

Defendant's Exhibit 2

Commissioners Minutes February 7, 1983 con't

COURTHOUSE ROOF

Grounds informed the Board his estimate for insulating and reconst[illegible] roof was $45,000. This does not include repairing downspouts or the d[illegible] suggested the Board consider replacing the glass dome with fiberglass [illegible] heat loss.

FAMILY PLANNING

Harlen requested to Cindy Smith, Family Planning Nurse to screen recepients [sic] so it is not so easy to obtain free service. He also recommended local physicians be used to keep the money in the county. Mrs. Smith reported W-2's are required to substantiate incomes. Recepients [sic] must have a yearly check up in order to obtain pill renewal. Some have more check ups if infections are detected.

VETERAN SERVICE OFFICER

Knepper made the motion to accept the resignation of Roland Bretz as Veteran Service Officer effective March 1, 1983 or until a replacement is appointed. Second by Wetzel. All in favor.

APPOINTMENTS

Knepper made the motion *Commissioner Wetzel* be reappointed to a one year term to the *Indians 15 Regional Planning Commission*. Second by Harlen. All in favor.

Wetzel made the motion *Patsy Bates* be re-appointed to another one year term on the *Contractual Library Board*. Second by Knepper. All in favor.

BONDS

The official bonds of *Judith Moesner, Grass Twp. Trustee* and *Neal Esarey, Road Foreman* were approved by the board.

BID (Gas & Oil for the Sheriff's Department)

Attorney Cissna reported to the Board he has been trying to contact Attorney Wetherill to see if the assignment agreement of Tyler's Truck Stop, Inc. was prepared for board's consideration.

FAS ROUTES

Haaff informed the Board the Affirmative Action Program, Equal Opportunity Policy adopted by the Board in 1978 and the Current Employment Statistics were forwarded to the Indiana Department of Highways on January 18. Haaff was requested to contact the departeent [sic] to see if additional information was needed.

BARGER BRIDGE

Cissna reported Mr. Smitterman, Department of Highways informed him the engineering contract was not approved by the Federal Government prior to payment and therefore would not reimburse the State. The State now wants reimbursed from the County. Harlen informed

the Board, Wendel had a contract with the County and therefore did not forward the required reports to the State for reimbursement. The State is basing their fee at $10.00 per hour, therefore they are requesting a reimbursement in the amount of $7,036.44. After talking to Indiana Dept. of HIghways [sic] on the phone Harlen made the motion to approve the resolution to the audit prepared by the State on the engineering fee. Second by Wetzel. All in favor.

QUADRA, INC.

Attorney Cissna was instructed to contact Chrisney State Bank to see if Quadra had deposited $10,000, in escrow as requested by the Board. No consideration will be given to the agreement until the deposit is made.

LINCOLN HILLS

President Harlen reported Spencer County has received $22,000, for increased development of Job Training Centers and In/School Programs, during Oct. 1 thru Sept. 30 for CETA programs, $31,402, made available for additional training and $47,500, for the Summer Youth Program. The programs will be administered through Lincoln Hills.

Defendant's Exhibit 3, p. 1

Owensboro Municipal Utilities (con't)

Harlen stated before the Board would consider the agreement two conditions would have to be met.

1. The county will grade and the company will furnish rock, where designated. Up to $3,000 credit with Mulser for rock. We're going to reap a little out of it, but we're entitled to it. The county will grade and fill ruts already present.

2. C.D. with local bank.

Lindsey inquired of the alternatives, I&M's C.D. was with a bank in Fort Wayne and there is a penalty for redeeming the C.D. early. What if the company buys gravel in Kentucky? You are laying down conditions you can't enforce.

Harlen answered if the rock is bought in Kentucky it would take more rock and the Board could refuse use of the road.

Harlen inquired if the company would be willing to put $10,000, up front and the County would maintain the road.

Mr. Pace inquired if the Board would approve the agreement today contingent upon: 1. The Company put down up to $3,000, in rock, 2. Change the C.D. to a Spencer County Bank.

Wetzel stated Joe is setting terms at $3,000 to construct the transmission lines, if he were setting the terms $10,000, would be more feasible.

President Harlen made the motion to accept the agreement subject to the stipulations: 1. Up to $3,000 in letter of credit to Mulzer for rock submitted to the Auditor's Office and 2. C.D. made payable to Board of Commissioners and Utility Company. These are to be submitted by 9:30 A.M. on March 21. Second by Wetzel. Knepper abstained.

Harlen informed Mr. Pace the contractor needs to meet with him to view the roads. Mr. Howard stated when the contract is let, the contractor will be in touch.

FINANCE BOARD

Haaff presented a letter from Spencer County Bank whereby they request the deposits of the Treasurer. Haaff inquired if the Board would set another hearing to clarify the last meeting. The Clerk and Treasurer were advised by Harlen to continue with Farmers State Bank until another board meeting and then a letter from him stating as only one member of the Board he could not over-ride the decision of the Board and advised the two officials to begin March 1 depositing with the banks as approved. They received a letter from Knepper stating she understood the two officials were to continue depositing with Farmers State Bank until the next meeting of the Board. Knepper stated another meeting should be held to clarify the misunderstandings.

VETERAN SERVICE OFFICER

Harlen read aloud the recommendations of Post #254 – to fill the vacancy of Veteran Service Officer created by the resignation of Roland Bretz.

1. Larry Pounds
2. John Garrett
3. Bob Richard
4. Paul Lehr
5. William Rininger

The five recommended by the post submitted applications for the Board's consideration.

Commissioner Wetzel made the motion to table any action in order to proceed with bid letting scheduled at this time and to have an opportunity to study the applications. Second by Knepper. All in favor.

Larry Pounds inquired if the appointment would be made today. President Harlen stated yes, if there was time.

CUM. BRIDGE

The Board approved the Change Order on *Bridge #192, "over Chrisney Drain" on Base Rd.* for an additional 68 T. of compacted aggregate and 42.5 T. of rip-rap for a total of $1,181.50

Defendant's Exhibit 3, p. 2

Commissioners Minutes March 7, 1983 (con't)

VETERAN SERVICE OFFICER

President Harlen reported to Bob Richard and Larry Pounds since there were only two commissioners present and they were in disagreement on the appointment, the decision would have to be tabled until March 21 at 10:00 A.M. when Commissioner Knepper could be present.

WHITNEY CABLEVISION OF IND.

Ralph Cales came before the Board and requested a transfer of Robert Wall & Associates to Whitney Cablevision of Indiana.

The Board instructed Cales to present plans and specs and they would meet tomorrow at 1:30 P.M. for consideration.

Meeting adjourned at 3:10 P.M. to meet again March 10 at 1:00 P.M. for Finance Board Meeting.

Board of Commissioners,

/s/ Joe Harlen

/s/ James E. Wetzel

/s/ Alberta Knepper

ATTEST: /s/ Mary E. Haaff
Mary E. Haaff, Auditor

COMMISSIONERS MINUTES

March 21, 1983

The meeting was called to order with all members present.

Wetzel made the motion the minutes of March 7 be approved as read. Second by Harlen. All in favor.

EMERGENCY AMBULANCE

Haaff was requested to check if the Ambulance Service was covered by the types of insurance as listed in the agreement of the county and ambulance service.

ENTERPRISE DOCK COMPANY

Gerald Payne, an Enterprise resident, inquired of the uses of the coal dock that enterprise Dock Company was proposing to construct near Richland as published by the news media. Surveying is being performed. Harlen stated the Board had not been contacted by the company and upon investigation the company has'nt [sic] contacted the Zoning Administrator for zoning rules and regulations. The first the Commissioners were informed was by Public Notice received March 11 from the Army Corps of Engineers whereby Enterprise Dock Company had applied for an application to construct a commercial coal and grain loading facility on the Ohio River.

Don Schulte, area realtor, reported to the Board it would be a critical mistake to allow industry into the area because the area is prime residential real estate. When

people are interested in locating in the country they ask for something in the vacinity [sic] of Highway 66 South from Rockport to Hatfield.

Becky Hinton from the Journal-Democrat stated she had talked to D.L. Hawkins from Corps of Engineers and another gentlemen in charge of permits and they were unaware of any local zoning permits.

Defendant's Exhibit 4

COMMUNITY DEVELOPMENT BLOCK GRANT (Drainage Problems in Hatfield and Richland Areas)

The letter from Department of Commerce whereby they had completed is [sic] review and evaluation of the County Assistance Program application and find the proposed feasibility study did not meet the criteria required for funding was reviewed by the Board.

VETERAN SERVICE OFFICER

President Harlen read aloud the letter from Robert W. Richard, whereby the [sic] withdraws his application to fill the vacancy of Veteran Service Officer.

Harlen stated he would like to make three stipulations to the next appointment.

1. Hours 8:00 A.M. to 4:00 P.M. as other county offices.

2. When the officer takes a veteran to the hospital and is away from the office, he has someone to set in his place.

3. He presents a monthly report.

Larry Pounds state [sic] the veteran is screened pretty close to determine if there is a family member who can take the veteran to the hospital. Most of the Veteran's are WW1 and mentally ill and need someone to accompany them to fill out the necessary reports. If someone sets in the officer's place, they would not be able to help the veteran.

Haaff stated the Surveyor customarily reports to her when he is away and when he is expected to return to his office. Veteran Officers in the past have notified her when they will be gone.

President Harlen stated he would withdraw his stipulation someone need be present if the officer gives the Auditor's phone number as an alternative when he is gone.

Knepper made the motion Larry Pounds be appointed to fill the unexpired term of Roland Bretz effective March 21 at 12:00 P.M. The hours be 8:00 A.M. to 4:00 P.M. and a monthly report be presented. Second by Wetzel. All in favor.

BID LETTING (Sheriff's Car)

Haaff reminded the Board April 4 at 10:00 A.M. was the bid letting for a new car for the Sheriff's Office.

COURTHOUSE ROOF (Three I Engineering)

Thomas Solecki presented his firms [sic] resume and stated their primary business is located in Evansville. If the Board wants a built up roof he recommends full time inspection.

Harlen inquired if his firm would work on a percentage basis.

If periodic inspection, yes, but if fulltime inspection is required he would have to consult his superior because its normally based on an hourly rate. He asked if additional insulation would be required because most heat

escapes through the roof. A built up roof is comparable in price to single ply.

Knepper commented flat roofs seem to leak most frequently.

Solecki stated the roof has sufficient slope so that it shouldn't be a problem. He stated he received the letter whereby the board would be receiving proposals up until 10:30 A.M. on April 4 and wanted to get an idea of what the commissioners were wanting.

Wetzel stated the Board would maybe need three different specs and prices to consider.

Solecki stated the dome could be caulked or completely replaced, chimney needs to be replaced and anything not needed be done away with.

Harlen stated the Board is not experienced with the type work needed that is why they are seeking a licensed engineer.

The Board asked Mr. Solecki to return April 4 with his proposal.

INDIANA CITIES WATER CORPORATION

The Auditor was requested to forward a letter to this company that due to revision of the bonding ordinance a bond in the amount of $5,000, is required to replace the bond which expired March 15, 1984. Also the company is to contact President Harlen concerning maintenance on Cemetary [sic] Road which is unsatisfactory.

DEFENDANT'S EXHIBIT 5

COMMISSIONERS MINUTES

January 3, 1984

The meeting was called to order at 9:40 A.M. with Harlen and Knepper present. Wetzel was absent due to illness in the family.

Knepper made the motion to approve the minutes of December 13 and 19. Second by Harlan.

The minutes of December 27 were approved on a motion by Knepper and a second by Harlan with one correction – "The bid of Spencer County Co-op for oil and air filters was accepted "– should read – "The bid of Spencer County Co-op for oil filters and air filters was accepted".

COMMUNITY CORRECTIONS PROGRAMS

The Auditor was requested to forward a letter to Nancy D. Broglin, Supervisor, Work Release Services informing her the Board is interested in the applications and further information for funding through the Community Corrections Program.

WELFARE CLAIMS

Commissioner Knepper stated Welfare Director Bauman informed her Welfare claims when approved by State Welfare are audited and they deduct excessive costs such as T.V. and telephone from hospital bills of Welfare patients.

APPOINTMENTS

No action was taken on the appointment of Foreman, District #2 and Kenneth Tribbie is to continue as forman until a decision is made.

John Garrett, an applicant for Veteran Service Officer, inquired if a decision had been made on an appointment.

Harlen answered the Board has the applications of Garratt and Larry Pounds. Two of the legion members had endorsed both applicants. He doesn't think the Commissioners should be put in such a position. With members endorsing both applicants, the Board is not sure who the Legion is recommending:

Knepper stated if the same people sign both applications, the Board doesn't know what the Legion wants.

Harlen stated the reason the Legions are contacted is because in 1980, the Board was accused of not acting in the best interest of the veterans. Since then the different posts have been contacted.

Haaff was requested to forward a letter to James Masterson, Commander Post #254 that the Commissioners desire the Legion Post in Spencer County conduct meetings to make one or more recommendations to the Commissioners prior to February 6 at 10:30 a.m. on the appointment. Legion members are welcome to attend the February 6 meeting.

Larry Pounds will continue as Veteran Service Officer until February 6 when a decision will be made.

BIDS (Sheriff's Department)

The Auditor was requested to advertise for bids for a new car (cars) for the Sheriff's Department.

LINCOLN HILLS DEVELOPMENT CORPORATION
(Project Head Start)

The Board reviewed and approved the application of Lincoln Hills Development Corporation seeking federal funds for the Head Start program.

INDIANA 15 REGIONAL PLANNING COMMISSION

The Board reviewed and approved the application of Indiana 15 seeking funds in the amount of $55,000, so they may continue the Economic Development Planning Program.

DEFENDANT'S EXHIBIT 6

Commissioners Minutes February 6, 1984 (con't)

CUM. BRIDGE (Bridge #62 on Co. Rd. 75 E. over "Branch of Honey [illegible]

The Board approved the change order in the amount of $372 [illegible] aggregate, linear grading and wing extension for a total conce [illegible] of $19,857.75, also approved was George Wandel's claim reflec [illegible].

SPECIAL FUNDS (Bridge #248 and Co. Rd. 350 N., 75 E. & 400 N.) [illegible]

The board approved payment to Dade Construction Co., Inc. [illegible] $11,890, for *Bridge #248* and approved payment to George Wandel [illegible] $2,440, for *Co. Rd. 350 N., 75 E. & 400 N.*

COUNTY INSURANCE (Wm. Alvey, etal vs Board of Commissioners, a [illegible]

Robinson reviewed the letter from Western World and comme [illegible] couple of clauses where there could be possible coverage. He [illegible] with Berger and the Board whereby the letter will be one of the [illegible].

BIDS (Sheriff's Department)

Attorney Robinson began opening bids at 10:00 A.M. for [illegible] Sheriff's Department:

1. Parsley Brothers Chevrolet-Olds, Inc. – Two 1984 Chev. Impala's 4 door sedans per spec – $12,973, each, less allowance of one 1980 chev. and one 1981 Chev. as trade ins for a total of $16,337.88

2. Uebelhor Chevrolet Company – Two 1984 Chev. Impala's 4 door sedans per spec – $10,979.26 each, less allowance of a 1980 and 1981 chevrolets as trade ins for a total of $18,958.52.

3. Conner Ford Sales, Inc. – Two 1984 Ford Crown Victoria S 4 door sedan per spec – $11,000, each, less allowance of one 1980 Chev. and one 1981 Chev. as trade ins for a total of $18,750.

Sheriff McDurmon reviewed the bids and stated he has been happy with both the Chevy and Ford. The specs are correct on the low bid.

Knepper made the motion the low bid of Parsley Brothers for two units for the total $16,337.88 be accepted. Second by Wetzel. All in favor.

COUNTY PROPERTY (County Home) 36-1-11-4.1

Pastor Pavelka presented three appraisals on the 3½ acres the church is interested in purchasing at the County Home.

Attorney Robinson informed the Board: 1. the County Council needs to adopt a resolution approving the sell, 2. appraisal by two licensed appraisers, 3. publish notice, setting out the terms of the sale, 4. zoning, etc, 5. bids open to public inspection, 6. private sell or public auction, 7 bidder can raise his bid after other bidders have been notified.

He stated the appraisals will have to be paid by the county, and a survey will have to be made.

Pavelka informed the Board the appraisals he presented did not cost the county but they give an idea of the value of the property which is about $15,000.

Harlen recommended the board seek approval of the Council to sell the 3 1/2 acres by sealed bid for not less than $16,000, to cover the value of the property plus costs of the sell.

Knepper stated if the land is sold by public auction, the church has a better chance of getting the property. She made the motion to seek Council's approval to sell the 3 1/2 acres at sealed bid for not less than $16,000. Second by Wetzel. All in favor.

The Auditor was requested to seek a transfer of funds for $300, appraisals and $700, surveying.

VETERAN SERVICE OFFICER

Harlen stated John Garrett informed him he was withdrawing his application for VA Officer because he may have a better job opportunity. He presented recommendations from the St. Meinrad Legion, Abe Lincoln Post 444, Santa Claus Legion, Paralyzed Veterans of America, Director of Rehabilitation and Vanderburgh County Veterans, recommending the re-appointment of Larry Pounds.

DEFENDANT'S EXHIBIT 7

Commissioners Minutes January 7, 1985 (con't)

County Road Entrance (con't)

DeWeese read aloud an amendment to the Zoning Ordinance adopted December 1, 1980 by the Board of Commissioners. The guidelines are specific as to the requirements that must be met by the owner to assure proper drainage whether a private, commercial or filed entrance. The determination of the size of the pipe shall be made by the Zoning Administrator upon the advice of the Highway Superintendent.

Wetzel reported the zoning Administrator should contact the Highway Superintendent when new construction is applied for and after 30 days the Superintendent should view the site.

APPOINTMENTS

Haaff presented the yearly report filed by Larry Pounds.

Harlan called for a motion on the appointment of a Veteran Service Officer.

Scherer made the motion to appoint *Larry Pounds, Veteran Service Officer.* Second by Wetzel. All in favor.

Wetzel made the motion to appoint *Joe Harlen* to the *Indiana 15 Regional Board.* Second by Scherer.

Wetzel inquired if there were any objections to the re-appointment of Gary Byers to the Alcoholic Beverage Board?

Harlen answered he has nothing against Mr. Byers, but for personal reasons he can't vote for anyone. Scherer agreed he could not vote either. Robinson was to check to see who would make the appointment.

Wetzel made the motion *Joe Harlen and James Buckles* be appointed to the *Lincoln Hills Corporation Board.* Harlen called for a second, he called a second time. Harlen made the second. Scherer abstained.

DUMPSTERS (4-H Youth & Community Center)

Jerry Peckenpaugh requested removal of the county owned dumpsters from the 4-H property. He suggested they be moved to the highway garage property. Trash from the dumpsters blows in both directions along the highway causing the property to look unsightly.

Harlen made the motion the dumpsters be moved on the request of Peckenpaugh. Second by Scherer. All in favor.

Haaff is to inform Gentry to remove the dumpsters.

LANDFILL

Harlen informed the Board Charlie Brown informed him by phone at 7:40 A.M. he was in agreement the Board continue to withhold $3,500, a month from his contract to pay John Varner. Brown was due in Perry County for a bid letting.

The Board ordered Haaff to continue withholding $3,500, to Varner, $100, a month to the Highway Department and the balance of $5,000, to Charlie Brown.

Robinson is to forward a letter to Charlie Brown requesting confirmation of his phone conversation with Harlen to continue the payments.

The Board agreed Haaff does not have to keep records for Brown and Varner.

John Varner informed the Board if in the future Brown refuses county trash he has a 10 year contract with Brown that probably couldn't be broken without Brown's consent. The county also has a 10 year contract with Brown unless he defaults. The County has no contract with him. He reported if the county has extra dirt it would make excellent top soil at the site.

Wetzel reported he is still receiving complaints Brown is charging citizens a fee to dump there. He has a receipt to back that up.

Harlen reported he is receiving calls also.

Robinson was instructed to review the contract to determine if the Board could switch to Warrick County for awhile and also who is responsible for maintenance of the road.

Scherer stated if Perry County is hauling there, they may be responsible for maintenance also.

Wetzel recommended to proceed to dump at the site but refuse to pay Brown.

The Board reviewed the letter from State Board of Health whereby Brown's 2 year permit expires May, 1985.

DEFENDANT'S EXHIBIT 8

Commissioners Minutes December 16, 1985 (con't)

U.S. ARMY CORP. OF ENGINEERS

The Board approved Public Notice 85-KY-245 and Notice [illegible]

COURTHOUSE HOLIDAY

The Courthouse will be closed December 31, 1985 and January 1, 1986 for the New Year Holidays.

APPOINTMENTS

The following appointments were made:

Damon Dawson – 4 years – Welfare Board
Kenneth Jones – 4 years – Advisory Plan
Leonard Wittman – 4 years – Advisory Plan
Sandra Siddons – 4 years – Board of Zoning of Appeals
David Hemmer – 4 years – Board of Zoning of Appeals
Larry Pounds – 1 year – Veteran Service Office
Paul Frank – 1 year – Civil Defense Director
Elmer Gentry – 1 year – Sanitation Lead Man
Jack Robinson – 1 year – County Attorney
Bill Scherer – 1 year – Lincoln Hills
Jim Wetzel – 1 year – Advisory Plan
Jim Wetzel – 1 year – Indiana 15 Regional

The remaining appointments will be made December 30.

CONDEMNATION (Ordinance 85-7)

Surveyor Brown presented his reports on the structures on real estate owned by Jeff Monar and Donald Strahl in Luce Township.

The Board will consider the reports January 6 and Robinson is to review the Ordinance for the next procedure.

SPENCER COUNTY EMERGENCY AMBULANCE SERVICE

Norma Partridge reported the ambulance service has a surplus 77 Dodge. The Rockport Fire Department would like to have it for an emergency vehicle. The service would like to have $1,000, back in their maintenance fund to use toward maintenance of other vehicles.

Scherer reported he discussed this with the Council the other night. He would rather see the fire department have it for an emergency vehicle than someone else.

Harlen reported if he remembers correctly, the county sold the Town of Dale the burnt out ambulance and would have to do the same in this case. Would have to be fair.

Since it is county property going to a government agency, Robinson will view the statute for proceedures. [sic]

Adjourned at 12:10 to meet again December 30.

Board of Commissioners,

/s/ Joe Harlen

/s/ James E. Wetzel

/s/ Bill Scherer

Attest: /s/ Mary E. Haaff
Mary E. Haaff, Auditor

DEFENDANT'S EXHIBIT 10

Commissioners Organizational Meeting
January 2, 1987 (con't)

Scherer made the motion to re-appoint *Jack R. Robinson, County Attorney.* Second by Barclay. All in favor.

Haaff was requested to forward a letter to Attorney Lindsey acknowledging receipt of his application.

Robinson informed the Commissioners the State Board of Accounts required a contract in writing describing his duties.

The Commissioners approved the contract.

APPOINTMENTS

Wetzel made the motion to re-appoint *Elwin Link* to the *Alcoholic Beverage Board.* Second by Barclay. Scherer abstained.

On a motion by Scherer and a second by Barclay, the vote was unanimous on the following appointments:

Veteran Service Officer – Larry Pounds
Civil Defense Director – Paul David Frank
Sanitation Lead Man – Elmer Gentry
Road Supt. – Joe Detzer
Road Clerk – Carol Champion
Shop Foreman – Frank Blowers
Foreman #1 – Ted Lashley
Foreman #2 – Jess Weatherholt
Foreman #3 – Larry Snyder
Advisory Plan Commission – James Wetzel
Indiana 15 Regional – Hugh Barclay

Park & Recreation Bd. – C.T. Grubb
Zoning Board Member – Kenneth Jones

Wetzel made the motion to appoint *Sandra Siddons* to another four year term on the *Advisory Plan*. Second by Scherer. All in favor.

Wetzel made the motion to compensate Darrell Stephens as Superintendent for the days of January 1 and 2 of 1987 and Joe Detzer for the remainder of January. Second by Scherer. All in favor.

Barclay inquired if Stephens would be eligible for any fringe benefits in 1987?

Robinson answered he doesn't think there are any written terms.

Wetzel reported he didn't think Wilma Brown and Patsy Bates were particularly interested in remaining on the Contractual Library Board.

Barclay stated he has discussed the openings with some people who are interested. He made the motion to table any action on the appointments until the February meeting. Second by Scherer. All in favor.

Barclay made the motion to table the appointment to the Health Board until January 5 due to the question of the profession of the member to be appointed. Second by Scherer. All in favor.

Wetzel reported he had been informed Mr. Buckles current member, had not been attending the board meetings of Lincoln Hills and would like the opportunity to contact Larry Kleemen on the matter.

The Board voted unanimous to table any action on the appointment until January 5.

BONDS

The official bonds of Robert Dugas and Grace Boehman were approved.

The performance bonds of Coyote Battery Co., Inc. for Electrical Parts and Rebuilt were approved.

Haaff reported due to loosing the balance in the appropriation on Culvert on 950 N. because a contract was not awarded, she at Wandel suggestion, is seeking $15,000, additional funds.

Meeting adjourned at 8:45 A.M. to meet again January 5 at 9:00 A.M.

BOARD OF COMMISSIONERS,

/s/ James E. Wetzel

/s/ Bill Scherer

/s/ Hugh Barclay.

ATTEST: /s/ Mary E. Haaff

DEFENDANT'S EXHIBIT 11

Commissioners Minutes December 21, 1987 (con't)

BIDS (Highway and Sanitation for 1988) con't.

Item III – Diesel Fuel

Spencer County Co-op
Marathon Fuels, Inc.
Petroleum Traders Corp.
Roy Cox Oil Company, Inc.

Scherer made the motion to approve the bid of Spencer County Co-op. Second by Barclay. All in favor.

Item VII – Tires & Tubes
Tom's Tire & Supply, Inc.

Wetzel reported with the inventory on hand, he doesn't think the purchases in 1988 will exceed the statutory requirements without bid letting.

The Board agreed to table the bid.

APPOINTMENTS (1988)

The following re-appointments were made by a unanimous vote.

1. Jack R. Robinson, County Attorney
2. P.D. Frank, Civil Defense
3. Larry Pounds, Veteran Service Officer
4. Jess Weatherholt, Highway Supt.

The remainder will be made in 1988.

COURTHOUSE HOLIDAY

The Courthouse will be closed December 31 and January 1 in observance of New Years.

INDIANA DEPT. OF ENVIRONMENTAL MANAGEMENT

The Board reviewed the registered construction and operation status of National Office Furniture Co. – Distribution Center.

INDIANA BELL

Approved the request to bury cable under Co. Rd. 475 – 500' N. of Co. Rd. 775.

BONDS

The official bonds of J.R. Brown, Joyce Hoss, Linda Ryan, and Dallas Garrett were approved.

The performance bonds of Rockport Auto Parts on Items X, XI, XI-A & XII for Highway supplies were approved. The bid bonds were released.

The performance bond of Mulzer Crushed Stone for sand & gravel and Braden Const. for Bridge #144 and Culvert on Co. Rd. 275 E. were approved.

CORNERSTONES (Claim of Michael Feldbusch)

Neuhoff presented the claim for $8,700.

The Board stated they were not sure if there was a payment schedule and would like to review the contract.

Neuhoff reported the original bid is in her office, but she wasn't given anything else. She can get the bid if the Board wishes.

The Board inquired if the cornerstones had actually been located?

Robinson read from the claim whereby Surveyor Brown stated the location of the stones are on file in his office as required by law.

The Board agreed to table consideration of the claim until the 1st meeting of 1988.

DEFENDANT'S EXHIBIT 12

The meeting was called to order by President Wetzel at 9:00 A.M. All members were present. Also present was County Attorney Robinson.

Minutes of the December 5 meeting were read with one correction by Barclay, "the difference should read $115, instead of $125, on the bid of Braden Construction on Culvert on Co. Rd. 900 E."

Scherer made the motion to approve, second by Barclay. All in favor.

SURVEYOR CLAIMS

Scherer made the motion claims for legal drain inspection $918.72 and travel $167.58 not be signed or funds encumbered. Second by Wetzel.

CULVERT ON CO. RD. 900 E.

Commissioners signed the Change Order for Culvert on Co. Rd. 900 E. with a decrease of $115, for rip-rap.

The Commissioners accepted the bid of Braden Construction Co., Inc. for $8,725.

COUNTRY CABLE

Doug Shadhahl, representing Country Cable, requesting a frachise [sic] in Spencer County, appeared before the Commissioners. He had spoken to the Commissioners at the December 5 meeting.

Attorney Robinson explained some changes to the Ordinance he had recommended regarding how the cable be laid. They should not cut through any pavement and not place cable in ditches along County roads.

Mr. Shedhahl stated they operate according to standard utility form.

Wetzel questioned the tree trimming?

Shedhahl stated this is done on County right-of-way only. Most of their cable is underground. He also stated pedestals carry signs referring to buried cable. He stated there is an 800 number and can be here in 4 hours. With the new frachise [sic] there would be a local representative here for day to day service.

The County franchise would continue South along Hwy 231 to Co. Rd. 700 N. Richland is an unincorporated town so they will include the outlying sub-division.

Scherer asked how far north of Grandview they would go? He stated he lived about 1 mile North of Grandview.

Mr. Shedhahl replied they would have to check into that area.

Scherer made the motion to approve Ordinance 1988-4. Barclay seconded. All in favor.

VETERAN SERVICE OFFICER

Auditor Beckman presented President Wetzel a letter from V.S.O. Larry Pounds.

REZONING – SPENCER COUNTY CO-OP (Luce Twp.)

Scherer made the motion to approve the rezoning of property in Luce Twp. from Agriculture to general Business as requested by Spencer County Co-op. Barclay seconded. All in favor.

BONDS

The Commissioners signed the Public Official Bonds for Donald O. Patmore, Sandra Kay Bender, Dallas Simpson Garrett, Linda Ryan, Madonna Kline, Joyce Hoss, Phyllis Small, Louise Talbott, Sandra Fleischman & Connie Houle. They also signed the Performance Bond of Braden Construction Co., Inc. on Bridge #182. Alsc Contract Bond of The Rockport Printers for printing for 1989.

DEFENDANT'S EXHIBIT 13

SPENCER COUNTY
VETERANS SERVICE OFFICE

LARRY G. POUNDS
Courthouse – 1st Floor
Rockport, IN 47635
(812) 649-2212

Refer to: BOARD OF COMMISSIONERS
SPENCER COUNTY
YEAR-END REPORT

DECEMBER 14, 1988

BOARD OF COMMISSIONERS:

I will try to make a brief outline of the duties in this office that I have done for the year of 1988.

I have made on the average of twelve trips to the Louisville V.A. Hospital and eighteen to the V.A. Clinics and Nursing Homes within the county. These trips being to aid and assist fellow veterans.

I try to transport all WW I vets to medical aid, as they are too old to do it themselves, also, other SC (100%) veterans that can't drive. I have filled out over 90 income reports for the widows and their children.

This office will receive over 600 calls and walk-ins for other information. I assist in the Employment and ON THE JOB TRAINING PROGRAMS (for eligible vets), and also set them up on a free mail-in Drug program.

Over $100,000 per month of Accured [sic] Monetary Benefits are returned to Spencer County each year, which I think is a big help to our county!

Thank you for appointing me Veteran Service Officer "this year" and I looking forward to serving you in 1989.

Sincerely,

/s/ Larry G. Pounds
LARRY POUNDS, V.S.O.
(Filed Dec. 14, 1988)

Signature Dorothy A. Beckman
Auditor Spencer County

DEFENDANT'S EXHIBIT 14

COMMISSIONERS MEETING

January 3, 1989

Meeting was called to order at 8:30 A.M. by Auditor Beckman. Commissioners present were Hugh Barclay, Louis Lubbehusen and David Gripenstroh. Also present was County Attorney Robinson.

Minutes of the December 27, 1988 meeting were read and approved on a motion by Griepenstroh, second by Lubbehusen.

COMMISSIONER ORGANIZATION

Lubbehusen made the motion to appoint Hugh Barclay, President. Second by Griepenstroh. All in favor.

Griepenstroh made the motion to appoint Louis Lubbehusen, Vice President. Second by Barclay. All in favor.

APPOINTMENTS

INDIANA 15 REGIONAL

Griepenstroh made the motion to appoint Lubbehusen the Commissioners appointment to Indiana 15 Regional. Second by Barclay. All in favor.

ADVISORY PLAN COMMISSION

Lubbehusen made the motion David Griepenstroh be the Commissioners appointment to the Advisory Plan Commission. Second by Barclay. All in favor.

Griepenstroh made the motion to appoint Alvin "Grassy" Ebert to fill the expired term of Dennis Frakes. Second by Lubbehusen. All in favor. This appointment if a four (4) year term.

Lubbehusen made the motion to appoint Jerry Embry to fulfill the vacancy on the Board in place of the late Jerome Graman. Second by Griepenstroh. All in favor.

Kay DeWeese objected to the appointment of Embry to replace Jerome Graman, since this is a non-partisan board.

Griepenstroh stated the Board is non-partisan, 2 Republicans and 3 Democrats.

HIGHWAY

On the motion of Griepenstroh, second by Lubbehusen, the following highway appointments were made:

Superintendent: Jess Weatherholt
1st District Foreman: Ted Lashley
2nd District Foreman: Louis Seifert
3rd District Foreman: Rick Weatherholt
Road Clerk: Cindy Lashley
All in favor.

COUNTY ATTORNEY

Lubbehusen made the motion to table this appointment until February 6 meeting to give them time to review the applications.

Second by Griepenstroh.

All in favor.

CIVIL DEFENSE

Griepenstroh made the motion to appoint P.D. Frank, Civil Defense Director. Second by Lubbenhusen. All in favor.

VETERAN SERVICE OFFICER

Lubbehusen made the motion to appoint Don Patmore, Veteran Service Officer. Second by Griepenstroh. All in favor.

ALCOHOLIC BEVERAGE BOARD

Lubbehusen made the motion to re-appoint Elvin Link to the Alcoholic Beverage Board. Second by Griepenstroh. All in favor.

SANITATION LEAD MAN

Lubbehusen made the motion to table this appointment until February. Second by Griepenstroh. All in favor.

SHOP FOREMAN

Griepenstroh made the motion to appoint Bernie Vargel, Shop Foreman. Second by Lubbehusen. All in favor.